

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W-88431.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 30 U.S.C. § 226(b) (1982). Where lands are determined to be within such a structure after a simultaneous oil and gas lease drawing but prior to issuance of a lease, a noncompetitive lease application for such lands must be rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are within the known geologic structure of a producing oil or gas field has the burden of showing by a preponderance of the evidence that the determination is in error.

APPEARANCES: Ronald Lee McCutchin, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Carolyn J. McCutchin has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 8, 1984, rejecting her noncompetitive oil and gas lease application drawn with first priority for parcel WY 414 on the September 1983 list of parcels available for simultaneous filings. The basis for the decision was that the lands embraced in parcel WY 414 were located within the known geologic structure (KGS) of a

producing oil or gas field. BLM explained its rejection of the simultaneous noncompetitive oil and gas lease application as follows:

The District Manager of our Rawlins office advised in a memorandum dated November 2, 1984, that the lands in this offer are entirely within the Washakie Basin Known Geological Structure which was effective May 29, 1984.

Therefore, your application is rejected under regulation 43 CFR 3112.5-2(b) which provides that an offer shall be rejected if the lands are determined to be within a Known Geological Structure of a producing oil and gas field prior to the time a lease is issued. Lands on a Known Geological Structure are leasable only by competitive bidding in accordance with regulation 43 CFR 3120.

In her statement of reasons appellant asks that the lease be issued in a timely manner contending, essentially, that she has followed the rules and regulations, has acted in good faith, and had no information as to any KGS or any production in the vicinity of the lease. She takes issue with the KGS asserting:

[I]t is not based on any sound geological and engineering data that I have available to me. I have a right to review the Bureau of Land Management's available information on this prospect for my own consideration and evaluation. I hereby request all geological and engineering information on which this decision was based.

From our initial review of the case, the Board took note of the fact that the administrative record provided by BLM for review of this appeal contained none of the data on which the KGS determination was made, nor any explanation of why or how the subject land was so designated. Accordingly, by order of January 23, 1985, we directed BLM to supplement the record by submitting to this Board a narrative description of the procedure followed and factors considered in designating this land as KGS, together with all data considered. A copy of this submission was to be served [**4] on appellant.

On February 5, 1985, the Acting District Manager, Rawlins, BLM, filed a certified copy of the official Geologic Narrative of the Washakie Basin KGS case file along with a copy of an Ericson Formation Reservoir Isopach Map which shows how the Washakie Basin KGS is expanded in the vicinity of lease W-88431. The report contains tables of wells and data considered in the KGS extension. BLM also filed a copy of a February 19, 1985, letter of transmittal submitting copies of this same information to appellant for her review. The geologic narrative states in pertinent part:

This KGS expansion is part of a larger expansion to be known as the Washakie Basin KGS. The north boundary of this segment of the Washakie Basin KGS is the township line of T. 17 N. This is the south boundary of another segment of the same Washakie Basin KGS. Parts of the west boundary have been administratively set at the Rock Springs - Rawlins District boundary. The remainder of the KGS boundary has been defined by the furthest extension of the zero footage isopachous line

drawn on the upper and lower Almond sandstone and Ericson sandstone, and the ten foot isopachous line on a Lewis sandstone. Since the basin's spacing orders are on 640 acre bases, each 640 acre tract cut by these isopachous lines is included in the KGS extension. These isopachs represent gross reservoir thickness based on sandstone porosity of the sandstones studied.

Porosity was determined from combination Neutron-Density logs. A minimum of 6% porosity was used for determining gross reservoir thickness in the upper Almond sands. In other reservoir sands a minimum porosity of 10%, in gas-bearing zones, was used. Gamma ray, resistivity and SP logs were also used to further augment the Neutron-Density logs and for correlation purposes. The zero isopachous line in the Mesaverde sands and the 10 foot isopachous line in the Lewis Sand represent a permeability/porosity barrier. This decrease in permeability/porosity creates an updip seal to hydrocarbon migrations.

* * * * *

Six OG Sim parcels are affected by this segment of the KGS extension, totaling 3,402.18 acres.

Total new acreage to be included in this segment of the Washakie is 310,767.45 acres.

[1] Section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (1982), provides that "[i]f the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding * * *." See 43 CFR 3100.3-1; 43 CFR Subpart 3120 (concerning competitive leases). The regulation specifically governing simultaneous noncompetitive oil and gas lease applications for lands within a KGS provides:

If prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field.

43 CFR 3112.5-2(b). It is well settled that a noncompetitive lease application for lands designated within a KGS must be rejected where lands embraced in that application are designated as within a KGS prior to issuance of the lease. See, e.g., Leonard Luning, 87 IBLA 123 (1985); John P. Brogan, 85 IBLA 379 (1985); Evelyn D. Ruckstuhl, 85 IBLA 69 (1985). This Department has no authority to issue a noncompetitive lease for lands within a KGS. McDonald v. Clark, 771 F.2d 460 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

[2] This Board has stated repeatedly that an applicant for an oil and gas lease who challenges a determination that certain lands are situated within the KGS of a producing oil and gas field has the burden of showing the

determination is in error. Evelyn D. Ruckstuhl, *supra*; Reed International, 80 IBLA 145 (1984); R. C. Altrogge, 78 IBLA 24 (1983). The burden on appellant is to show by a preponderance of the evidence that the determination is erroneous. See Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984).

The term "known geological structure" is defined as "technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." 43 CFR 3100.0-5(1). The Secretary of the Interior has historically delegated the responsibility for determining the existence and extent of a KGS to his technical expert in the field. When that expert makes a determination that lands qualify for a KGS, the Secretary is entitled to rely upon that reasoned opinion. Bruce Anderson, 63 IBLA 111 (1982). A KGS determination recognizes the existence of a continuous entrapping structure on some part of which there is production; however, it is not a guarantee that all lands included therein are productive. See, e.g., Robert G. Lynn, 61 IBLA 153 (1982).

Although appellant disagrees with the KGS determination as it affects her lease area, she did not respond to the geologic evidence sent to her by BLM and has provided no evidence to counter the BLM's conclusions.

Accordingly, based upon our review of the case file, pleadings, and documents submitted by the parties, we conclude appellant has failed to meet the burden of showing that the challenged KGS determination was in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge

